

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

STEPHEN HEATH BARTLE,

Plaintiff,

vs.

MIKE BATISTA, LEROY KIRKEGARD,  
DAN HESS, ROXANNE WIGERT,  
VERA HOSCHIED, PAUL LUCIER,  
TRACY NAPIER, CARLA STRUTZL,  
HOWIE WIGERT, ALVIN FODE, and  
BILLIE REICH,

Defendants.

CV 13-0074-H-DWM-RKS

ORDER AND FINDINGS AND  
RECOMMENDATIONS OF UNITED  
STATES MAGISTRATE JUDGE

The prior prescreening order concluded that Mr. Bartle's allegations that Defendants provided false information to the Parole Board failed to state a claim upon which relief may be granted and should be dismissed. The order also stated that Mr. Bartle had stated a claim for failure to protect against Defendants Fode, Hoschiel, Roxanne Wigert, and Tracy Napier, and that the Complaint would be served upon these Defendants in a subsequent order. Mr. Bartle was given an opportunity to file an amended complaint regarding his claims against Defendants Batista, Kirkegard, Hess, Lucier, Strutzl, Howie Wigert, and Reich. (Doc. 13.)

Mr. Bartle has now filed an Amended Complaint only against Defendants

Fode, Hoschiel, Roxanne Wigert, and Tracy Napier for the claims the Court previously found should be served upon those Defendants. Mr. Bartle was advised that an amended complaint replaces the original complaint such that the original complaint no longer serves a function in the case. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

Accordingly, the Amended Complaint will be served upon Defendants Fode, Hoschiel, Roxanne Wigert, and Tracy Napier. Mr. Bartle's claims alleging Defendants provided false information to the Parole Board should be dismissed. His claims against Defendants Batista, Kirkegard, Hess, Lucier, Strutzi, Howie Wigert, and Reich should also be dismissed.

It is **ORDERED**:

1. Pursuant to Fed.R.Civ.P. 4(d), Defendants Fode, Hoschiel, Roxanne Wigert, and Tracy Napier are asked to waive service of summons by executing, or having counsel execute, the Waiver of Service of Summons. The Waiver must be returned to the Court within thirty (30) days of the entry date reflected on the Notice of Electronic Filing. If Defendants choose to return the Waiver of Service of Summons, the answer or appropriate motion will be due within sixty (60) days after the entry date of this Order as reflected on the Notice of Electronic Filing, pursuant to Fed.R.Civ.P. 12(a)(1)(B).

2. The Clerk of Court shall forward the documents listed below to:

Legal Counsel for the  
Montana Department of Corrections  
P.O. Box 201301  
Helena, MT 59620-1301

- \* Complaint (Doc. 2);
- \* Order Granting Permission to File Amended Complaint (Doc. 13);
- \* Amended Complaint (Doc. 14);
- \* this Order;
- \* a Notice of Lawsuit & Request to Waive Service of Summons; and
- \* a Waiver of Service of Summons.

3. Any party's request that the Court grant relief, make a ruling, or take an action of any kind must be made in the form of a motion, with an appropriate caption designating the name of the motion, and must be served on all parties to the litigation, pursuant to Federal Rules of Civil Procedure 7, 10, and 11. If a party wishes to give the Court information, such information must be presented in the form of a notice. The Court will not consider requests made or information presented in letter form.

4. Pursuant to Fed.R.Civ.P. 5(a), all documents presented for the Court's consideration must be simultaneously served by first-class mail upon the opposing

party or their counsel if the party is represented. Each party shall sign and attach a proper certificate of service to each document filed with the Court. The Certificate of Service must state the date on which the document was deposited in the mail and the name and address of the person to whom the document was sent. The sender must sign the certificate of service.

5. Mr. Bartle shall not make any motion for default until at least seventy (70) days after the date of this Order.

6. At all times during the pendency of this action, Mr. Bartle must immediately advise the Court and opposing counsel of any change of address and its effective date. Failure to file a notice of change of address may result in the dismissal of the action for failure to prosecute pursuant to Fed.R.Civ.P. 41(b).

It is **RECOMMENDED:**

Mr. Bartle's allegations regarding providing false information to the Parole Board and his claims against Defendants Batista, Kirkegard, Hess, Lucier, Strutzel, Howie Wigert, and Reich should be DISMISSED.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &  
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Bartle may file objections to these Findings and Recommendations

within fourteen (14) days after service (mailing) hereof.<sup>1</sup> 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 5th day of December, 2014.

/s/ Keith Strong  
Keith Strong  
United States Magistrate Judge

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<sup>1</sup>As this deadline allows a party to act after the Findings and Recommendations is "served," it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.

**NOTICE OF LAWSUIT AND REQUEST FOR  
WAIVER OF SERVICE OF SUMMONS**

TO: Legal Counsel for the Montana Department of Corrections  
P.O. Box 201301  
Helena, MT 59620-1301

A lawsuit has been commenced by a pro se plaintiff against Alvin Fode, Vera Hoschiel, Roxanne Wigert, and Tracy Napier. A copy the Complaint and Amended Complaint are attached to this notice. They have been filed in the United States District Court for the District of Montana, Civil Action No. CV-13-74-H-DWM-RKS. The Court has completed its pre-screening and concludes these Defendants must file a responsive pleading. *See* 42 U.S.C. § 1997e(c), (g)(2); 28 U.S.C. §§ 1915(e)(2), 1915A(a), (b).

This is not a formal summons or notification from the Court, but rather a request that you sign and file the enclosed waiver of service in order to save the cost of service by the U.S. Marshal's Service. The cost of service will be avoided if you file the signed Waiver of Service of Summons within 30 days of the date the Order directing this Notice of Lawsuit and Request for Waiver of Service of Summons to be sent was entered as indicated on the Notice of Electronic Filing.

If you comply with this request and return the waiver to the Court, it will be filed with the Court and no summons will be served. The action will then proceed as if you had been served on the date the waiver is filed, except you must file an answer or appropriate motion within 60 days of the date the Order directing this Notice of Lawsuit and Request for Waiver of Service of Summons to be sent was entered as indicated on the Notice of Electronic Filing.

If you do not wish to waive service on behalf of Defendants, please indicate this on the Waiver of Service of Summons form. The Court will, in turn, order the U.S. Marshal's Service to serve the complaint personally on Defendants and may impose the full costs of such service.

/s Keith Strong  
Keith Strong  
United States Magistrate Judge

## WAIVER OF SERVICE OF SUMMONS

TO: The U.S. District Court for the District of Montana

The following Defendants acknowledge receipt of your request to waive service of summons in the following action: Bartle v. Fode, et al., Civil Action No. CV-13-00074-H-DWM-RKS, filed in the United States District Court for the District of Montana. Defendants also received a copy of the Complaint and Amended Complaint. I am authorized by the following Defendants to agree to save the cost of service of a summons and an additional copy of the Complaint in this action by not requiring that the following individuals be served with judicial process in the case provided by Fed.R.Civ.P. 4:

\_\_\_\_\_; \_\_\_\_\_;

\_\_\_\_\_; \_\_\_\_\_;

\_\_\_\_\_; \_\_\_\_\_;

The above-named Defendants retain all defenses or objections to the lawsuits or to the jurisdiction or venue of the Court except for objections based on a defect in the summons or in the service of the summons. I understand judgments may be entered against the above-named Defendants if an answer or motion under Fed.R.Civ.P. 12 is not served within 60 days after the date the Order directing the Notice of Lawsuit and Request for Waiver of Service of Summons to be sent was entered as indicated on the Notice of Electronic Filing.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED/TYPED NAME

\_\_\_\_\_  
ADDRESS